IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.55755 of 2006
BINDU DEVI
Versus
STATE OF BIHAR & ORS
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3. 22.8.2008. Heard Mr. Manish Kumar No.2, the learned counsel for the petitioner and Mr. Dharmendra Jha, the learned counsel for O.P. Nos.2 and 3 as also Mr. Jharkhandi Upadhayay, the learned A.P.P. for the State.

Through this application, the petitioner has prayed for the quashing of the order dated 16.10.2006 passed by the learned Chief Judicial Magistrate, Madhubani, in Complaint Case No.897 of 2005 by which he has been pleased to dismiss the complaint case registered on the basis of the protest petition filed by the petitioner.

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It appears that the petitioner had initially filed the Complaint Case No.536 of 2004 on 21.5.2004, inter alia alleging therein that while she was returning home after purchasing some articles, the accused persons asked her to stop and when she refused they committed rape on her. The said complaint was sent to the concerned police station under Section 156(3) Cr.P.C. and the police after due investigation submitted a final form notwithstanding the fact that the prosecutrix as also all the witnesses had supported the prosecution case in their statement under Section 161 Cr.P.C. Prior to the submission of final form the petitioner is said to have filed Cr.W.J.C. No.161 of 2005 before this Court and this Court had directed the Officer Incharge of Bisphi P.S., D.S.P., Madhubani and the complainant to appear in the said writ application in person and on

12.1.2006, the complainant supported her case in toto but notwithstanding the same the final form was submitted and the accused were not sent up for trial.

In the protest petition which proceeded as Complaint Case No.897 of 2005, the prosecutirx supported her story of being raped by the accused persons as did the other witnesses examined under Section 202 Cr.P.C. but the learned Chief Judicial Magistrate, Madhubani, on looking into and considering extraneous matter dismissed the complaint case.

In Chandradeo Vs. Parkash Chandra (AIR 1960 SC 430) , it was observed by the Apex Court that since the object of an inquiry is to ascertain whether the allegations made in the complaint are intrinsically true , the Magistrate has to satisfy himself that there is sufficient ground for proceeding. For this he is entitled to consider only the evidence taken by him at the inquiry and he is not entitled to rely upon any other materials besides this and where there is prima facie evidence, even though an accused may have a plausible defence of his innocence, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused.

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In the instant case, apparently, where the witnesses at the inquiry under Section 202 Cr.P.C. had supported the prosecution case there was no reason for the learned Chief Judicial Magistrate to have dismissed the complaint petition.

There is another aspect of the matter. It is by now well

settled by a catena of decisions of the Apex Court that the statement of the prosecutrix in court was sufficient to invite conviction notwithstanding there being discrepancies in the evidence of the witnesses. I am supported in my view by the decisions of State of H.P. Vs. Asha Ram reported in (2005)13 SCC 766, Vishnu Vs. State of Maharashtra reported in (2006) 1 SCC 283 and Om Prakash Vs. State of U.P. reported in (2006)9 SCC 787. The reason which prevailed with the Apex Court in coming to the finding as it did was that in the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely, implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future. In doing so she not only would be sacrificing her future but also would invite the wrath of being ostracized and cast out from the society she belongs to and also from her family circle.

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Due regard being had to the discussions made above, I am of the opinion that the impugned order cannot be sustained in law and is required to be set aside. Accordingly, while setting aside the order impugned, I remand the case back to the court of the learned Chief Judicial Magistrate, Madhubani for fresh decision and consideration in the light of the observations made above.

Accordingly, this application is allowed and the matter is remitted back to the court below for necessary action.

(Abhijit Sinha,J)

P.S.